

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RUSSELL SCHOOLEY,)	
Petitioner,)	Civil Action No. 14-515
)	
v.)	Senior District Judge Maurice B. Cohill
)	Magistrate Judge Susan Paradise Baxter
CORRECTIONAL OFFICER)	
J.D. SMITH, <i>et al.</i>,)	
)	
Respondents.)	

MEMORANDUM ORDER

Petitioner, Russell Schooley (“Schooley”), filed a Complaint in the Middle District of Pennsylvania, in February 10, 2014 (CA No. 3:14-cv-224) against Officers J.D. Smith, Briggs, and D. Kelly, and the Pennsylvania Department of Corrections [ECF No. 1]. In the Complaint Schooley alleges that Officer J.D. Smith destroyed Schooley’s auto mechanic textbooks and that Officer Briggs failed to prevent this destruction of property. Schooley further alleges that Officer D. Kelly issued a written misconduct to him as retaliation for a grievance that Schooley had filed against Officer J.D. Smith regarding the destruction of property.

On March 6, 2014 Magistrate Judge Blewitt, of the Middle District of Pennsylvania, recommended transferring the case to the Western District because all of the claims arose in the Western District at SCI-Greene and all of the Defendants are employed in the Western District [ECF No. 6 at 1]. By order of court, adopting the Report and Recommendation (“R & R”) of Judge Blewitt, the case was transferred to the Western District of Pennsylvania on April 21, 2014 [ECF No. 10]. It is our understanding that this case, originally filed at CA No. 3:14-cv-224, is duplicative, due to clerical error, of a case currently pending in the Middle District of

Pennsylvania filed by Schooley on December 4, 2013 at CA No. 3:13-cv-2929. Magistrate Judge Lenihan is recommending our case at issue (transferred case CA No. 3:14-cv-224) be dismissed as duplicative, that the pending motions be dismissed as moot, and that this case be closed.

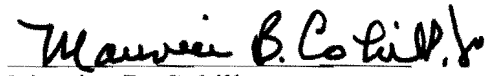
After *de novo* review of the two pending cases, together with the report and recommendation and objections thereto, we agree with Magistrate Judge Lenihan's July 22, 2014 R&R [ECF No. 30] that the cases filed in the Middle District at numbers CA No. 3:13-cv-2929 and CA No. 3:14-cv-224 (now our case at issue) are identical with regard to facts of the cases, claims, petitioner and defendants.

Schooley, in his Objections to the R&R [ECF No. 34], misunderstands the intent and consequence of Judge Lenihan's R & R to mean that the case should not have been transferred and that his case in its entirety should be dismissed. This is not so. Judge Lenihan states that the case before us in the Western District of Pennsylvania is already in litigation in the Middle District of Pennsylvania, (and we might add has been actively and thoughtfully reviewed and litigated for the past 8 months), and the identical case is before us due to clerical error. Therefore, the case before us should be dismissed to allow the pending original case in the Middle District to be fully litigated. We agree.

Therefore, the following Order is entered:

And now to-wit, this 27th day of August 2014, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that the Petitioner's Complaint [ECF No. 1] is DISMISSED with prejudice. The pending Motion for a Temporary Restraining Order [ECF No. 23] and Motion to Dismiss [ECF No. 26] are dismissed as moot. The Report the Report and Recommendation of Magistrate Judge Lenihan dated July 22, 2014 [ECF No. 30] is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that a Certificate of Appealability is DENIED. The Clerk shall mark this case **CLOSED**.

A handwritten signature in black ink, reading "Maurice B. Cohill" with a stylized flourish at the end.

Maurice B. Cohill
Senior United States District Court Judge
Western District of Pennsylvania